



Ninety-Eighth Legislature - First Session - 2003  
**Introducer's Statement of Intent**  
**LB 572**

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**Chairperson:** David Landis  
**Committee:** Revenue  
**Date of Hearing:** March 12, 2003

The following constitutes the reasons for this bill and the purposes which are sought to be accomplished thereby:

The purpose of LB 572, commonly referred to as Model Complementary Legislation, is to enhance the state's ability to obtain compliance by tobacco product manufacturers with the requirements of Neb. Rev. Stat. §§69-2702 and 69-2703, referred to as the Model Escrow Act and enacted following adoption of the Master Settlement Agreement (MSA) between the states and certain tobacco products manufacturers. The provisions of LB 572 were drafted by a joint committee consisting of attorneys with the Tobacco Project of the National Association of Attorneys General and attorneys with numerous Attorney General's offices throughout the country in states which are signatories to the MSA, including Nebraska.

Currently, pursuant to the provisions of §69-2703, a tobacco product manufacturer is required to either (1) become a participating manufacturer by joining the MSA and performing its financial obligations under that Agreement; or (2) annually place into a qualified escrow fund an amount of money calculated by applying a statutorily established rate per cigarette unit sold in the state by that manufacturer. The escrow fund may be used to satisfy a tobacco related judgment obtained by the state in the future against that manufacturer, and if no judgment is obtained the funds revert back to the manufacturer in twenty-five years.

Under the provisions of §69-2703, the Attorney General, on behalf of the state, is authorized to bring a civil action against a nonparticipating manufacturer (NPM) that fails to place the required funds into a qualified escrow account by the annual deadline. States are encouraged to diligently enforce such provisions of the Model Escrow Act as absent such diligent enforcement their payments under the MSA may be subject to a significant downward adjustment.

While the state has been aggressively enforcing the provisions of the Model Escrow Act, enforcement has proven costly and cumbersome. Among other things, the Model Escrow Act enables NPMs to sell cigarettes for up to 16 months in a state before the state can bring an enforcement action. Also, many NPMs are located in foreign countries and it has proven difficult and expensive to obtain service of process or to effect judgments. And as the state has moved forward with numerous actions against non-compliant NPMs, many NPMs have devised ingenious schemes to evade compliance. The purpose of the Model Complementary

Legislation is to make state enforcement of the Model Escrow Act more effective and thereby promote the purposes for which the Model Escrow Act was enacted.

Many states including Nebraska have already enacted different forms of complementary legislation. While this legislation is a step in the right direction it significantly varies from state to state imposing differing requirements on licensed wholesale dealers and tobacco product manufacturers. Besides the advantage of uniformity and ease of compliance, the Model Complementary Legislation is also more comprehensive and addresses multiple schemes devised by some NPMs to avoid compliance with the Model Escrow Act.

The proposed Model Complementary Legislation would require the Tax Commissioner, upon the recommendation of the Attorney General, to maintain a directory of cigarette products that are permitted to be stamped and sold in this state. The proposed legislation would prohibit the sale or placement of cigarette tax stamps on products that are not listed in the directory.

While all tobacco product manufacturers would be required to make specific certifications before a brand could be listed in the directory, a NPM would be further required to certify several facts relevant to enforcement efforts and particularly that it made all required payments. The Tax Commissioner's decision regarding listing a product in the directory would be subject to a hearing and appeal pursuant to the Administrative Procedures Act. The proposed Model Complementary Legislation would also permit the state to require funding of escrow accounts more frequently than on an annual basis under circumstances specifically defined through rules and regulations promulgated by the Tax Commissioner.

Stamping agents selling or stamping for sale those tobacco products not listed in the directory would be subject to penalties including license revocation, civil penalties, confiscation of product, injunctive relief and violations of the unfair and deceptive trade practices act.

**Principal Introducer:**

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**Senator Jim Jensen**